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THE KERALA AGRICULTURISTS DEBT RELIEF (AMENDMENT) BILL, 1958

(Report of the Select Committee)

The Select Committee to which the Bill was referred, have considered the Bill as also the provisions of the principal Act and now submit this, their report with the Bill as reported by the Committee annexed thereto.

1. The Bill was published as a Gazette Extraordinary dated the 10th December 1958.

2. The Bill was introduced in the Assembly on the 13th December 1958 and the motion for reference to the Select Committee was adopted on the 26th February 1959.

3. *Clause 2.*—Under clause (a) of section 2 of the Act, any person liable to pay basic tax exceeding one hundred and fifty rupees per annum in any three years after 1950-51 and before the commencement of the Act will not be an agriculturist. It is considered by the Select Committee that no such exclusion is necessary. Accordingly a new sub-clause to clause 2 of the Bill has been added to achieve this object.

Under clause (c) (xi) of section 2 any debt exceeding Rs. 1,500 borrowed under a single transaction and due to a Banking Company is exempt from the provisions of the Act other than those relating to instalment payment. The Committee feel that debts exceeding Rs. 15,000 due to Banking Companies should alone be exempted from the provisions of the Act and that the number of instalments in which such debts should be repaid shall be eight instead of seventeen. Necessary provision in this regard has been made.

4. *Clause 4.*—The Committee consider that in the case of debts due to a Banking Company not exempted from the scope of the Act the number of instalments in which they shall be repaid shall be twelve where the debt does not exceed Rs. 1,500 and eight where it exceeds Rs. 1,500. It is also felt by the Committee that it should be made clear that where any instalment of any debt is not paid on the due date, the only consequence shall be that the creditor will be entitled to recover the same as provided in section 10 and that the debtor shall not forfeit the benefits conferred by section 4. Accordingly section 4 has been recast.

5. *Clauses 5 and 10.*—The Committee is of opinion that in the case of debts due to a Banking Company a higher rate of interest should be allowed. They feel that 7 per cent per annum simple interest in the case of debts which do not exceed Rs. 1,500 and 9 per cent per annum simple interest in the case of debts exceeding Rs. 1,500 will be reasonable. Necessary provision for this purpose has been incorporated in the clause.

6. *Clause 8.*—The Committee consider that section 9 may be amended so that transactions coming within the purview of that section may be treated in the same manner as usufructuary

mortgages within the ambit of sub-sections (2), (3) and (5) of section 11. Clause 8 is intended for this purpose.

7. *Clause 11 (NEW)*.—It is considered by the Committee that benefits similar to those conferred on agriculturists who have mortgaged their property on usufructuary mortgage should be conferred on agriculturists who have granted melpattams before the commencement of the Act for periods of two years or more. A new section 11A is proposed to be inserted in the Act for this purpose.

8. *Clause 15 (NEW)*.—The Committee consider that the provisions of the section 22 of the Act should also be made applicable to cases where immovable property has been sold for the recovery of arrears of rent. They also consider that it is necessary to clarify that a judgment-debtor shall include a person from whom the entire debt due under a decree has been realised by the sale of his immovable property. For these purposes a new clause has been added by the Committee.

9. *Clause 16 (NEW)*.—The Committee consider that instead of providing for appeals in different sections of the Act, a separate section providing for appeals in all cases may be included. The new section 23A proposed to be inserted by the clause is intended to serve this purpose.

10. *Clause 17 (NEW)*.—The Committee is of opinion that debtors who have partly discharged their debts under the Madras Agriculturists Relief Act, 1936, Madras Indebted Agriculturists (Repayment of Debts) Act, 1955 or the Travancore-Cochin Indebted Agriculturists Relief Act, 1956, should be given the option to discharge the debts either under these Acts, (notwithstanding their repeal) or under the Kerala Agriculturists Debt Relief Act, 1958. The new sub-section (2) to section 26 of the Act proposed to be added by the clause is intended to achieve this object.

The other changes made by the Committee are only either verbal or consequential.

V. R. KRISHNA IYER,
Chairman of the Select Committee.

THE KERALA AGRICULTURISTS DEBT RELIEF (AMENDMENT) BILL, 1958.

(As revised by the Select Committee)

(Words underlined or sidelined indicate the amendments suggested by the Committee)

A

BILL

to amend the Kerala Agriculturists Debt Relief Act, 1958 (31 of 1958)

Preamble.—WHEREAS it is expedient to amend the Kerala Agriculturists Debt Relief Act, 1958 (31 of 1958), for the purposes hereinafter appearing;

BE it enacted in the Tenth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Agriculturists Debt Relief (Amendment) Act, 1959.

(2) It shall be deemed to have come into force on the 14th day of July 1958.

2. *Amendment of Section 2, Act 31 of 1958.*—In Section 2 of the Kerala Agriculturists Debt Relief Act, 1958 (Act 31 of 1958), hereinafter referred to as the principal Act,—

(1) in sub-clause (iii) of clause (a), the words and figures beginning with the words "or any person liable to pay basic tax" and ending with the words "before the commencement of this Act", and the Explanation to the said sub-clause shall be omitted;

(2) in clause (c),—

(i) in sub-clause (ii), for the words "the Reserve Bank of India or to any Co-operative Society", the following shall be substituted, namely,—

> "The Reserve Bank of India or to the Travancore Credit Bank (in liquidation) constituted under the Travancore Credit Bank Act or to any Co-operative Society,";

(ii) in sub-clause (ix), for the words "any rent" the words "any rent or michavaram" shall be substituted;

(iii) in sub-clause (x), in clause (d) of the Explanation, for the words "on the failure of the foreman", the words "on the failure of the foreman or foremen" shall be substituted;

(iv) in sub-clause (xi)—

(a) for the words "one thousand five hundred rupees", the words "fifteen thousand rupees" shall be substituted;

(b) for the proviso, the following proviso shall be substituted, namely—

"Provided that in the case of any debt exceeding fifteen thousand rupees borrowed under a single transaction and due before the commencement of this Act to any banking company as defined in the Banking Companies Act, 1949, any agriculturist debtor shall be entitled to repay such debt in eight equal half yearly instalments as provided in sub-section (3) of Section 4, but the provisions of Section 5 shall not apply to such debt,"

(v) in clause (ii) of Explanation I to clause (c), for the words "whether before or after the commencement of this Act, among the heirs, legal representatives or assigns of a debtor or of a creditor or as a result of partition", the words "in any manner whatsoever, whether before or after the commencement of this Act" shall be substituted;

(3) after sub-clause (f), the following sub-clause shall be inserted, namely—

"(ff) "melpattom" means a license to collect usufructs from a property for a specified period in recoupment of an advance made or promised;"

3. *Amendment of Section 3, Act 31 of 1958.*—In Section 3 of the principal Act,—

(1) in sub-section (1) and in Explanation I thereto, for the words "shall be made", the words "shall be made or continued" shall be substituted;

(2) in sub-section (2), the words "into court" shall be omitted.

4. *Substitution of new section for Section 4, Act 31 of 1958.*—For Section 4 of the principal Act, the following section shall be substituted, namely,—

"4. Payment of debt in instalments: (1) Subject to the provisions of sub-section (5), notwithstanding anything contained in any law or contract or in any decree or order of Court, any debt may be discharged in the manner specified in sub-sections (2) and (3);

(2) If any debt is repaid in seventeen equal half yearly instalments together with interest at the rate specified in sub-section (1) of Section 5 on the principal debt outstanding at the time of each payment, the whole debt shall be deemed to be discharged:

Provided that in the case of debts due to a banking company as defined in the Banking Companies Act, 1949 the number of instalments in which the debt shall be repaid shall be twelve where the debt does not exceed one thousand and five hundred rupees and eight where it exceeds one thousand and five hundred rupees.

(3) The first instalment of any debt payable under sub-section (2) shall be paid before the expiry of a period of six months from the date of the commencement of this Act and each of the remaining instalments shall be paid on or before the date of expiry of a period of six months from the last day on which the previous instalment was due.

(4) Where any instalment of any debt is not paid on the due date the creditor shall be entitled to recover the same as provided in Section 10 but the debtor shall not forfeit the benefits conferred by this section.

(5) The provisions of this section shall not apply to mortgages to which section 11 applies except as provided in sub-section (6) of that section."

5. *Substitution of new section for section 5 Act 31 of 1958.*—For Section 5 of the principal Act, the following Section shall be substituted, namely,—

"5. Interest payable on debts and rents:

(1) For determining the amount of a debt for the purpose of payment under this Act—

(i) interest shall be calculated at the rate applicable to the debt under the law, custom, contract or decree or order of court under which it arises or at 5 per cent per annum simple interest, whichever is less, and credit shall be given for all sums paid or credited towards interest and only such amount as is found outstanding, if any as interest thus calculated, shall be deemed payable together with the principal amount or such portion of it as is due; and

(ii) notwithstanding anything in clause (1) not more than one-half of the principal shall be deemed payable or to have been payable towards interest which accrued due till the commencement of this Act.

If the amount paid or credited towards interest exceeds the amount payable under clause (i) or clause (ii) such excess shall be credited towards the principal and the balance, if any and future interest alone shall be recoverable:

Provided that in the case of debts due to a banking company as defined in the Banking Companies Act, 1949, the rate of interest shall be—

(i) where the debt does not exceed one thousand and five hundred rupees seven per cent per annum simple interest or the contract rate whichever is less; and

(ii) where the debt exceeds one thousand and five hundred rupees but does not exceed fifteen thousand rupees, nine per cent per annum simple interest or the contract rate whichever is less.

(2) Notwithstanding anything to the contrary in any law, custom or contract or any decree or order of court, interest on arrears of rent or michavaram in respect of lands or buildings shall not be chargeable at a rate higher than 5 per cent per annum simple interest. Where any person has collected interest at a rate higher than that specified above, the excess shall be credited towards future rent or michavaram:

Provided that nothing contained in sub-section (1) or sub-section (2) shall be deemed to require the creditor or the landlord to refund any sum which has been paid to or recovered by him".

6. *Amendment of section 6, Act 31 of 1958.*—In section 6 of the principal Act,—

(i) in sub-section (1), for the words and figures "recalculated under section 4", the words and figures "recalculated under section 5" shall be substituted;

(2) in sub-section (2), for the words, "be deemed to be a subsequent order of court", the words "be deemed to have the effect of a subsequent order of court" shall be substituted.

7. *Amendment of section 8, Act 31 of 1958.*—In section 8 of the principal Act,—

(1) in sub-section (2), for the words "to the court which passed the decree" the words, "to the court which passed the decree or to the court to which the decree has been sent for execution" shall be substituted;

(2) sub-section (6) shall be omitted.

8. *Amendment of section 9, Act 31 of 1958.*—In section 9 of the principal Act,—

(i) sub-section (2) shall be omitted;

(ii) in sub-section (3)—

(a) for the words "five per cent per annum", the words and figure "the rate specified in section 5" shall be substituted;

(b) for the last sentence beginning with the words "The amount if any" and ending with the words "shall be reconveyed to the agriculturist debtor", the following shall be substituted, namely,—

"The amount, if any, outstanding after such appropriation together with the value of improvements, if any, effected by the creditor shall be paid in accordance with the provisions of

sub-sections (2), (3) and (5) of section 11, as if the transaction were a usufructory mortgage and the rights of the creditor and the debtor shall be governed, as far as may be, by the provisions of the said sub-sections."

(iii) after sub-section (3), the following sub-section shall be inserted, namely,—

"(4) For applications under sub-section (1) court fees shall be paid as if they were suits for the same reliefs."

9. *Amendment of section 10, Act 31 of 1958.*—In section 10, of the principal Act, for the words, brackets and figures "sub-section (2) of section 4", wherever they occur, the words, brackets and figures "sub-sections (2) and (3) of section 4" shall be substituted.

10. *Amendment of section 11, Act 31 of 1958.*—In section 11 of the principal Act,—

(1) In sub-section (2)—

(i) for the words "shall be entitled", the words "shall, on application, be entitled" shall be substituted;

(ii) for the words, figure and brackets "subject to the provisions of sub-section (3)", the words, figures and brackets "subject to the provisions of sub-sections (3) and (4)" shall be substituted;

(2) In sub-section (3)—

(i) for the words "with the deposit", the words "with the application" shall be substituted;

(ii) for the words "the court shall pass a decree", the words "the court shall pass an order" shall be substituted; and

(iii) the following shall be added at the end, namely,—

"and an order passed under this sub-section shall be deemed to be a decree:

Provided that the rate of interest in the case of mortgages standing in the name of a banking company as defined in the Banking Companies Act, 1949, at the time of the commencement of this Act shall be, where the mortgage is for an amount—

(i) not exceeding Rs. 1,500, seven per cent per annum; and

(ii) where the mortgage is for an amount exceeding Rs.1,500, nine per cent per annum".

(3) in sub-section (4) for the words "the lease shall stand terminated", the words and figures "the lease shall, except in the case of tenants to whom the provisions of Section 43 of the Malabar Tenancy Act, 1929 apply, stand terminated", shall be substituted.

11. *Insertion of new Section 11A in Act 31 of 1958.*—After Section 11 of the principal Act, the following section shall be inserted, namely,—

"11A. Special provision regarding certain melpattoms.

(1) This section applies to all subsisting melpattoms granted by an agriculturist before the commencement of this Act for periods of two years or more.

(2) Notwithstanding that the period of the melpattom has not expired, the person who granted the melpattom shall, on application, be entitled to terminate the melpattom on depositing into court one-third of the advance outstanding.

Explanation.—For the purpose of this sub-section "advance outstanding" means an amount which bears to the total amount of the advance the same proportion as the unexpired term of the melpattom bears to its full term.

(3) If there is dispute regarding the amount of the advance outstanding, the court may provisionally determine the amount after such summary enquiry as it deems fit and direct the deposit of the deficit, if any. On such deposit, the rights of the melpattomdar to collect the usufructs shall cease and the person who granted the melpattom shall be entitled to take the usufructs.

(4) As soon as may be after the provisional determination of the amount, the court shall after due enquiry, finally determine the amount and pass orders—

(i) for the deposit of the deficit or the adjustment or refund of the excess if any, as the case may be; and

(ii) directing the person who granted the melpattom to deposit the balance amount, if any, in ten equal half-yearly instalments together with interest which accrued due on such balance outstanding till the date of payment of each instalment at 5 per cent per annum, simple interest, the first instalment being payable within a period of six months from the date of the first deposit or the date of the provisional determination of the amount of advance under sub-section (2) as the case may be.

(5) The melpattomdar shall have a charge on the land, the usufructs from which formed the subject of the melpattom, for the amount due, and such charge shall have priority over all other charges created after the date of the melpattom.

(6) Court fees on the amount outstanding after the deposit under sub-section (2) shall be paid by the applicant before the recording of evidence or, where no such evidence is recorded before the final determination under sub-section (4).

(7) An order passed under sub-section (4) shall also direct the sale of the land on which charge has been created under

sub-section (5) for realising any amount due, and such order shall be deemed to be a decree".

12. *Omission of Section 13, Act 31 of 1958.*—Section 13 of the principal Act shall be omitted.

13. *Amendment of Section 16, Act 31 of 1958.*—In Section 16 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely,—

"(3) During the pendency of an application under Section 15, the court may stay any suit or the execution of any decree against the applicant or his properties."

14. *Amendment of Section 20, Act 31 of 1958.*—Section 20 of the principal Act shall be re-numbered as sub-section (1) of that section, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely,—

"(2) The provisions of Section 5 of the Indian Limitation Act, 1908, shall be applicable to all applications and appeals filed under this Act".

15. *Amendment of Section 22, Act 31 of 1958.*—In Section 22 of the principal Act—

(1) In sub-section (1)—

(i) for the words and figures beginning with the words "where any immovable property" and ending with the words "in liquidation", the following shall be substituted, namely,—

"Where any immovable property in which an agriculturist had an interest has been foreclosed or sold in execution of any decree for the recovery of a debt or arrears of rent or sold under the provisions of the Revenue Recovery Act for the time being in force for the recovery of a debt due to a banking company in liquidation as defined in the Banking Companies Act, 1949";

(ii) after the third proviso the following proviso shall be inserted namely,—

"Provided also that in the case of a sale in execution of a decree for the realisation of arrears of rent the application under this sub-section for setting aside the sale may be made at any time within one year from the commencement of this Act."

(2) In the Explanation, the following shall be added at the end, namely,—

"and a person from whom the entire debt due under a decree has been realised by the sale of his immovable property."

16. *Insertion of new Section 23A in Act 31 of 1958.*—After Section 23 of the principal Act, the following section shall be inserted, namely,—

"23A. Appeals.—(1) An appeal shall lie against any order passed under sub-section (1) of Section 8, sub-section (1) or sub-section (3) of Section 9 and Sections 12, 18, 22 and 23 to the court to which appeals ordinarily lie from the decisions of the court passing the order and the order passed in appeal shall be final:

Provided that where the order is passed by a Revenue Court the appeal shall lie to the District Court within whose jurisdiction the Revenue Court is situate and such appeal shall be filed within sixty days of the date of the order appealed against.

17. *Amendment of Section 26, Act 31 of 1958.*—Section 26 of the principal Act shall be renumbered as sub-section (1) of that section, and—

(i) in sub-section (1) as so renumbered, after the words and figures "the Travancore-Cochin Indebted Agriculturists' Relief Act, 1956", the following words, figures and brackets shall be inserted, viz., "and the Travancore Debt Relief Act, 1115 (Act II of 1116)";

(ii) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely—

"(2) Notwithstanding such repeal, any liability to which the provisions of the enactments repealed under sub-section (1) applied and was partly discharged before the commencement of this Act, may at the option of the debtor be discharged in accordance with the provisions of those enactments, and for that purpose the said enactments shall be deemed to continue in force."

V. KRISHNAMOORTHI,
Secretary,
Legislative Assembly.